

AMENDED IN SENATE JANUARY 31, 2000

AMENDED IN SENATE MAY 11, 1999

**SENATE BILL**

**No. 167**

**Introduced by Senator Hayden**

January 11, 1999

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An act to ~~amend Section 27706 of the Government Code,~~  
~~and to~~ add Section 186.22b to the Penal Code, relating to  
criminal street gang injunctions.

LEGISLATIVE COUNSEL'S DIGEST

SB 167, as amended, Hayden. Criminal street gangs:  
injunctions.

(1) Existing law, under provisions contained in the Civil Code and Penal Code, authorizes the district attorney and the city attorney to seek a civil injunction to abate a public nuisance which may include criminal street gang activity. Existing law also separately authorizes the Attorney General to seek an injunction against a criminal street gang when that criminal street gang is engaging in activity that constitutes a public nuisance.

This bill would reorganize these provisions to specifically grant to a district attorney, a city attorney, or the Attorney General, in a single provision of the Penal Code, the authority to bring a civil action against an alleged criminal street gang or its members to abate a public nuisance. Under the bill, ~~any indigent defendant in that action would be entitled to have counsel appointed to represent him or her to the same extent as a defendant in a criminal prosecution, and the court would~~

~~be required to advise the defendant of that right when he or she appears in court to answer the complaint and to appoint counsel if the defendant is indigent and requests counsel the court would attempt to transport incarcerated defendants to the hearing regarding the preliminary injunction, or have the incarcerating institution transport them, as specified. Under this bill, prior to the hearing regarding issuing a preliminary injunction, the court would notify all defendants that the court would explore methods of securing counsel for them, as specified, if they are unable to afford counsel.~~

~~(2) Existing law imposes upon the public defender specified duties, including the duty to defend without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or any misdemeanor or felony offense at all stages of the proceedings. The public defender is also required to prosecute all appeals to a higher court or courts for any indigent person who has been convicted of one of those offenses based upon a determination by the public defender that the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.~~

~~This bill would authorize the public defender to also prosecute all appeals to a higher court or courts of any person enjoined in an action to abate a public nuisance under the provision in (1), where the public defender believes the appeal will or might reasonably be expected to result in the reversal or modification of the injunction.~~

~~(3) By imposing new duties on local officials, the provisions in (1) and (2) bill would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by~~

the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. (a) The Legislature finds and declares~~  
2     ~~that lawsuits to abate public nuisances due to gang~~  
3     ~~activities as defined in Section 370 of the Penal Code and~~  
4     ~~Sections 3479 and 3480 of the Civil Code, commonly~~  
5     ~~called gang injunction suits, are increasingly used for~~  
6     ~~well intentioned public safety purposes but have the~~  
7     ~~collateral effect of damaging a class of indigent~~  
8     ~~individuals by denying them the right to counsel which~~  
9     ~~is otherwise protected by the United States and California~~  
10    ~~Constitutions.~~

11    ~~(b) The Legislature also finds and declares that while~~  
12    ~~gang injunctions are civil actions, they are criminal~~  
13    ~~matters in nature because they are investigated,~~  
14    ~~prepared, litigated, and policed by law enforcement~~  
15    ~~officials, including district attorneys, city attorneys, and~~  
16    ~~police and sheriff departments. In addition, violations of~~  
17    ~~a gang injunction will result in criminal prosecution.~~

18    ~~(c) Further, the Legislature finds and declares that~~  
19    ~~appointment of counsel for indigent defendants named in~~  
20    ~~gang injunctions is necessary to ensure the protection of~~  
21    ~~constitutionally guaranteed rights, accuracy of~~  
22    ~~information alleged in the injunction, and increased~~  
23    ~~fairness in the process in which injunctions are rendered.~~

24    ~~SEC. 2. Section 27706 of the Government Code is~~  
25    ~~amended to read:~~

26    ~~27706. The public defender shall perform the~~  
27    ~~following duties:~~

28    ~~(a) Upon request of the defendant or upon order of~~  
29    ~~the court, the public defender shall defend, without~~  
30    ~~expense to the defendant, except as provided by Section~~  
31    ~~987.8 of the Penal Code, any person who is not financially~~  
32    ~~able to employ counsel and who is charged with the~~  
33    ~~commission of any contempt or offense triable in the~~

1 superior or municipal courts at all stages of the  
2 proceedings, including the preliminary examination. The  
3 public defender shall, upon request, give counsel and  
4 advice to such person about any charge against the person  
5 upon which the public defender is conducting the  
6 defense, and shall prosecute all appeals to a higher court  
7 or courts of any person who has been convicted, where,  
8 in the opinion of the public defender, the appeal will or  
9 might reasonably be expected to result in the reversal or  
10 modification of the judgment of conviction. The public  
11 defender may prosecute all appeals to a higher court or  
12 courts of any person enjoined in an action to abate a  
13 public nuisance under Section 186.22b of the Penal Code  
14 where, in the opinion of the public defender, the appeal  
15 will or might reasonably be expected to result in the  
16 reversal or modification of the injunction.

17 (b) Upon request, the public defender shall prosecute  
18 actions for the collection of wages and other demands of  
19 any person who is not financially able to employ counsel,  
20 where the sum involved does not exceed one hundred  
21 dollars (\$100), and where, in the judgment of the public  
22 defender, the claim urged is valid and enforceable in the  
23 courts.

24 (c) Upon request, the public defender shall defend  
25 any person who is not financially able to employ counsel  
26 in any civil litigation in which, in the judgment of the  
27 public defender, the person is being persecuted or  
28 unjustly harassed.

29 (d) Upon request, or upon order of the court, the  
30 public defender shall represent any person who is not  
31 financially able to employ counsel in proceedings under  
32 Division 4 (commencing with Section 1400) of the  
33 Probate Code and Part 1 (commencing with Section  
34 5000) of Division 5 of the Welfare and Institutions Code.

35 (e) Upon order of the court, the public defender shall  
36 represent any person who is entitled to be represented by  
37 counsel but is not financially able to employ counsel in  
38 proceedings under Chapter 2 (commencing with Section  
39 500) of Part 1 of Division 2 of the Welfare and Institutions  
40 Code.

~~(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.~~

~~(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings, or in an action to abate a public nuisance under Section 186.22b of the Penal Code.~~

~~SEC. 3.~~

~~SECTION 1.~~ Section 186.22b is added to the Penal Code, to read:

~~186.22b. (a) An action to abate a public nuisance, as defined in Section 370 of this code, and Sections 3479 and 3480 of the Civil Code, may be brought against an alleged criminal street gang or its members by a district attorney, city attorney, or the Attorney General.~~

~~(b) In any action to abate a public nuisance authorized by this section, any indigent defendant shall be entitled to have counsel appointed to represent him or her to the same extent as a defendant in a criminal prosecution. The summons and complaint in any such action shall state in noticeable and prominent typeface that each defendant has the right to have counsel appointed for the proceedings if he or she is indigent and desires the assistance of counsel. At the time a defendant appears in court to answer the complaint, he or she shall be informed by the court that it is his or her right to have counsel and that if he or she is indigent and desires counsel, the court will appoint counsel. The court shall ask the defendant if he or she desires the assistance of counsel, and if he or she desires to but is unable to employ counsel, the court shall assign counsel.~~

~~(c) The provisions of Section 987.2 through 987.9 shall be applicable to appointment of counsel under this section.~~

1     **(b)** In any action to abate a public nuisance against a  
2 criminal street gang or its members, the court shall notify  
3 any incarcerated defendants who have been served with  
4 a complaint that the court will attempt to transport them  
5 to the court house for the hearing to determine whether  
6 a preliminary injunction should be issued and for the trial  
7 to determine if the injunction should be imposed. If a  
8 defendant requests to be transported to attend these  
9 proceedings, and the defendant is in custody in the  
10 county where the suit has been instituted, the court shall  
11 order the sheriff's department to bring the defendant to  
12 the court house for the proceedings. If the defendant is  
13 in state prison or any other facility where the court does  
14 not have jurisdiction to order the defendant transported,  
15 the court shall request that the facility so transport the  
16 defendant.

17     **(c)** Prior to conducting a hearing on whether a  
18 preliminary injunction should issue, the court shall notify  
19 all defendants served with a complaint in the suit that if  
20 they establish that they are financially unable to hire  
21 attorneys to represent them in the suit and would desire  
22 legal representation, the court will explore methods of  
23 securing them counsel. With respect to any defendants  
24 who so request counsel, the court shall inquire of the  
25 public defender's office, local legal aid organizations, and  
26 any local volunteer legal organizations whether they will  
27 represent the defendants in the suit. If after this inquiry,  
28 the court is unable to secure counsel for the defendants  
29 who request legal representation, the defendants shall be  
30 notified that they will have to defend the suit without that  
31 representation.

32     ~~SEC. 4.~~

33     SEC. 2. Notwithstanding Section 17610 of the  
34 Government Code, if the Commission on State Mandates  
35 determines that this act contains costs mandated by the  
36 state, reimbursement to local agencies and school  
37 districts for those costs shall be made pursuant to Part 7  
38 (commencing with Section 17500) of Division 4 of Title  
39 2 of the Government Code. If the statewide cost of the  
40 claim for reimbursement does not exceed one million

1 dollars (\$1,000,000), reimbursement shall be made from  
2 the State Mandates Claims Fund.

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